

1-1 By: Harris S.B. No. 1450
1-2 (In the Senate - Filed March 13, 2003; March 20, 2003, read
1-3 first time and referred to Committee on Jurisprudence; May 5, 2003,
1-4 reported adversely, with favorable Committee Substitute by the
1-5 following vote: Yeas 6, Nays 0; May 5, 2003, sent to printer.)

1-6 COMMITTEE SUBSTITUTE FOR S.B. No. 1450 By: Harris

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to the authority of a guardian of the person of a ward to
1-10 transport the ward to an inpatient mental health facility and file
1-11 for emergency detention under certain circumstances and to consent
1-12 to the administration of certain medication.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subsection (b), Section 743, Texas Probate Code,
1-15 is amended to read as follows:

1-16 (b) The guardian of the person, whether or not there is a
1-17 separate guardian of the estate, shall submit to the court an annual
1-18 report by sworn affidavit that contains the following information:

1-19 (1) the guardian's current name, address, and phone
1-20 number;

1-21 (2) the ward's current:

1-22 (A) name, address, and phone number; and

1-23 (B) age and date of birth;

1-24 (3) the type of home in which the ward resides,
1-25 described as the ward's own; a nursing, guardian's, foster, or
1-26 boarding home; a relative's home, and the ward's relationship to the
1-27 relative; a hospital or medical facility; or other type of
1-28 residence;

1-29 (4) the length of time the ward has resided in the
1-30 present home and, if there has been a change in the ward's residence
1-31 in the past year, the reason for the change;

1-32 (5) the date the guardian most recently saw the ward,
1-33 and how frequently the guardian has seen the ward in the past year;

1-34 (6) a statement indicating whether or not the guardian
1-35 has possession or control of the ward's estate;

1-36 (7) the following statements concerning the ward's
1-37 health during the past year:

1-38 (A) whether the ward's mental health has
1-39 improved, deteriorated, or remained unchanged, and a description if
1-40 there has been a change; and

1-41 (B) whether the ward's physical health has
1-42 improved, deteriorated, or remained unchanged, and a description if
1-43 there has been a change;

1-44 (8) a statement concerning whether or not the ward has
1-45 regular medical care, and the ward's treatment or evaluation by any
1-46 of the following persons during the last year, including the name of
1-47 that person, and the treatment involved:

1-48 (A) a physician;

1-49 (B) a psychiatrist, psychologist, or other
1-50 mental health care provider;

1-51 (C) a dentist;

1-52 (D) a social or other caseworker; or

1-53 (E) another individual who provided treatment;

1-54 (9) a description of the ward's activities during the
1-55 past year, including recreational, educational, social, and
1-56 occupational activities, or if no activities are available or if
1-57 the ward is unable or has refused to participate in them, a
1-58 statement to that effect;

1-59 (10) the guardian's evaluation of the ward's living
1-60 arrangements as excellent, average, or below average, including an
1-61 explanation if the conditions are below average;

1-62 (11) the guardian's evaluation of whether the ward is
1-63 content or unhappy with the ward's living arrangements;

2-1 (12) the guardian's evaluation of unmet needs of the
2-2 ward;

2-3 (13) a statement of whether or not the guardian's power
2-4 should be increased, decreased, or unaltered, including an
2-5 explanation if a change is recommended;

2-6 (14) a statement that the guardian has paid the bond
2-7 premium for the next reporting period; and

2-8 (15) any additional information the guardian desires
2-9 to share with the court regarding the ward, including whether the
2-10 guardian has filed for emergency detention of the ward under
2-11 Subchapter A, Chapter 573, Health and Safety Code, and if
2-12 applicable, the number of times the guardian has filed and the dates
2-13 of the applications.

2-14 SECTION 2. Section 767, Texas Probate Code, is amended to
2-15 read as follows:

2-16 Sec. 767. POWERS AND DUTIES OF GUARDIANS OF THE PERSON.

2-17 (a) The guardian of the person is entitled to the charge and
2-18 control of the person of the ward, and the duties of the guardian
2-19 correspond with the rights of the guardian. A guardian of the
2-20 person has:

2-21 (1) the right to have physical possession of the ward
2-22 and to establish the ward's legal domicile;

2-23 (2) the duty of care, control, and protection of the
2-24 ward;

2-25 (3) the duty to provide the ward with clothing, food,
2-26 medical care, and shelter; and

2-27 (4) the power to consent to medical, psychiatric, and
2-28 surgical treatment other than the in-patient psychiatric
2-29 commitment of the ward.

2-30 (b) Notwithstanding Subsection (a)(4) of this section, a
2-31 guardian of the person of a ward has the power to transport the ward
2-32 to an inpatient mental health facility for a preliminary
2-33 examination in accordance with Subchapters A and C, Chapter 573,
2-34 Health and Safety Code.

2-35 SECTION 3. Subsection (b), Section 770, Texas Probate Code,
2-36 is amended to read as follows:

2-37 (b) Except as provided by Subsection (c) or (d) of this
2-38 section, a guardian may not voluntarily admit an incapacitated
2-39 person to a public or private in-patient psychiatric facility or to
2-40 a residential facility operated by the Texas Department of Mental
2-41 Health and Mental Retardation for care and treatment. If care and
2-42 treatment in a psychiatric or a residential facility are necessary,
2-43 the person or the person's guardian may:

2-44 (1) apply for services under Section 593.027 or
2-45 593.028, Health and Safety Code;

2-46 (2) ~~or~~ apply to a court to commit the person under
2-47 Subtitle D, Title 7, Health and Safety Code (Persons with Mental
2-48 Retardation Act), Subtitle C, Title 7, Health and Safety Code
2-49 (Texas Mental Health Code), or Chapter 462, Health and Safety Code;
2-50 or

2-51 (3) transport the ward to an inpatient mental health
2-52 facility for a preliminary examination in accordance with
2-53 Subchapters A and C, Chapter 573, Health and Safety Code.

2-54 SECTION 4. Subpart E, Part 4, Chapter XIII, Texas Probate
2-55 Code, is amended by adding Section 770A to read as follows:

2-56 Sec. 770A. ADMINISTRATION OF MEDICATION. (a) In this
2-57 section, "psychoactive medication" has the meaning assigned by
2-58 Section 574.101, Health and Safety Code.

2-59 (b) If a person under a protective custody order as provided
2-60 by Subchapter B, Chapter 574, Health and Safety Code, is a ward who
2-61 is not a minor, the guardian of the person of the ward may consent to
2-62 the administration of psychoactive medication as prescribed by the
2-63 ward's treating physician regardless of the ward's expressed
2-64 preferences regarding treatment with psychoactive medication.

2-65 SECTION 5. The heading of Subchapter A, Chapter 573, Health
2-66 and Safety Code, is amended to read as follows:

2-67 SUBCHAPTER A. APPREHENSION BY PEACE OFFICER
2-68 OR TRANSPORTATION FOR EMERGENCY DETENTION BY GUARDIAN

2-69 SECTION 6. Subchapter A, Chapter 573, Health and Safety

3-1 Code, is amended by adding Sections 573.003 and 573.004 to read as
3-2 follows:

3-3 Sec. 573.003. TRANSPORTATION FOR EMERGENCY DETENTION BY
3-4 GUARDIAN. (a) A guardian of the person of a ward who is 18 years of
3-5 age or older, without the assistance of a peace officer, may
3-6 transport the ward to an inpatient mental health facility for a
3-7 preliminary examination in accordance with Section 573.021 if the
3-8 guardian has reason to believe and does believe that:

3-9 (1) the ward is mentally ill; and
3-10 (2) because of that mental illness there is a
3-11 substantial risk of serious harm to the ward or to others unless the
3-12 ward is immediately restrained.

3-13 (b) A substantial risk of serious harm to the ward or others
3-14 under Subsection (a)(2) may be demonstrated by:

3-15 (1) the ward's behavior; or
3-16 (2) evidence of severe emotional distress and
3-17 deterioration in the ward's mental condition to the extent that the
3-18 ward cannot remain at liberty.

3-19 Sec. 573.004. GUARDIAN'S APPLICATION FOR EMERGENCY
3-20 DETENTION. (a) After transporting a ward to a facility under
3-21 Section 573.003, a guardian shall immediately file an application
3-22 for detention with the facility.

3-23 (b) The application for detention must contain:

3-24 (1) a statement that the guardian has reason to
3-25 believe and does believe that the ward evidences mental illness;

3-26 (2) a statement that the guardian has reason to
3-27 believe and does believe that the ward evidences a substantial risk
3-28 of serious harm to the ward or others;

3-29 (3) a specific description of the risk of harm;

3-30 (4) a statement that the guardian has reason to
3-31 believe and does believe that the risk of harm is imminent unless
3-32 the ward is immediately restrained;

3-33 (5) a statement that the guardian's beliefs are
3-34 derived from specific recent behavior, overt acts, attempts, or
3-35 threats that were observed by the guardian; and

3-36 (6) a detailed description of the specific behavior,
3-37 acts, attempts, or threats.

3-38 (c) The guardian shall immediately provide written notice
3-39 of the filing of an application under this section to the court that
3-40 granted the guardianship.

3-41 SECTION 7. Subsection (c), Section 573.021, Health and
3-42 Safety Code, is amended to read as follows:

3-43 (c) A physician shall examine the person as soon as possible
3-44 within 24 hours after the time the person is apprehended by the
3-45 peace officer or transported for emergency detention by the
3-46 person's guardian.

3-47 SECTION 8. Subsection (a), Section 573.023, Health and
3-48 Safety Code, is amended to read as follows:

3-49 (a) A person apprehended by a peace officer or transported
3-50 for emergency detention under Subchapter A or detained under
3-51 Subchapter B shall be released on completion of the preliminary
3-52 examination unless the person is admitted to a facility under
3-53 Section 573.022.

3-54 SECTION 9. Subsection (c), Section 573.024, Health and
3-55 Safety Code, is amended to read as follows:

3-56 (c) If the person was apprehended by a peace officer under
3-57 Subchapter A, arrangements must be made to immediately transport
3-58 the person. If the person was transported for emergency detention
3-59 under Subchapter A or detained under Subchapter B, the person is
3-60 entitled to reasonably prompt transportation.

3-61 SECTION 10. Section 573.025, Health and Safety Code, is
3-62 amended to read as follows:

3-63 Sec. 573.025. RIGHTS OF PERSONS APPREHENDED, [OR] DETAINED,
3-64 OR TRANSPORTED FOR EMERGENCY DETENTION. (a) A person apprehended,
3-65 [or] detained, or transported for emergency detention under this
3-66 chapter has the right:

3-67 (1) to be advised of the location of detention, the
3-68 reasons for the detention, and the fact that the detention could
3-69 result in a longer period of involuntary commitment;

4-1 (2) to a reasonable opportunity to communicate with
4-2 and retain an attorney;

4-3 (3) to be transported to a location as provided by
4-4 Section 573.024 if the person is not admitted for emergency
4-5 detention, unless the person is arrested or objects;

4-6 (4) to be released from a facility as provided by
4-7 Section 573.023;

4-8 (5) to be advised that communications with a mental
4-9 health professional may be used in proceedings for further
4-10 detention; and

4-11 (6) to be transported in accordance with Sections
4-12 573.026 and 574.045, if the person is detained under Section
4-13 573.022 or transported under an order of protective custody under
4-14 Section 574.023.

4-15 (b) A person apprehended, ~~[or]~~ detained, or transported for
4-16 emergency detention under this subtitle shall be informed of the
4-17 rights provided by this section:

4-18 (1) orally in simple, nontechnical terms, within 24
4-19 hours after the time the person is admitted to a facility, and in
4-20 writing in the person's primary language if possible; or

4-21 (2) through the use of a means reasonably calculated
4-22 to communicate with a hearing or visually impaired person, if
4-23 applicable.

4-24 SECTION 11. Section 574.103, Health and Safety Code, is
4-25 amended to read as follows:

4-26 Sec. 574.103. ADMINISTRATION OF MEDICATION TO PATIENT UNDER
4-27 COURT-ORDERED MENTAL HEALTH SERVICES. (a) In this section, "ward"
4-28 has the meaning assigned by Section 601, Texas Probate Code.

4-29 (b) A person may not administer a psychoactive medication to
4-30 a patient who refuses to take the medication voluntarily unless:

4-31 (1) the patient is having a medication-related
4-32 emergency; ~~[or]~~

4-33 (2) the patient is under an order issued under Section
4-34 574.106 authorizing the administration of the medication
4-35 regardless of the patient's refusal; or

4-36 (3) the patient is a ward who is 18 years of age or
4-37 older and the guardian of the person of the ward consents to the
4-38 administration of psychoactive medication regardless of the ward's
4-39 expressed preferences regarding treatment with psychoactive
4-40 medication.

4-41 SECTION 12. This Act takes effect September 1, 2003.

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